

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2043 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

JAYANTILAL VALJIBHAI

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

MR MA KHARADI for Petitioner

MR TUSHAR MEHTA for Respondent No. 1, 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 31/01/97

ORAL JUDGEMENT

Rule.

The pleadings in this petition are complete. I have heard both the sides on merits at length. I, therefore, proceed to dispose of this petition finally.

2. The petitioner is running a factory at Junagadh and he has obtained electric connection and his consumer number is 34101/58621/3. In the month of June, 1995 his old meter No.6009189 was not working properly, and, therefore, on 21st June, 1995, the same was removed by the respondent and a new meter was installed in the place of old meter. According to the petitioner, the meter bearing No.210134 was initially running very fast and it stopped running after 2 or 3 days. Therefore, by letter dated 21st June, 1995, he informed the respondent about the non-working of the meter. He had also sent a telegram. As per his claim, thereafter, on 27th July, 1995, the respondent removed the said meter and they installed a new meter.

3. On 13th February, 1996, the respondent informed the present petitioner that they want to check and test the meter which had stopped working in their laboratory at Sabarmati on 26th February, 1996 and requested the present petitioner to personally remain present at the time of said testing and checking. After the receipt of the said letter, the respondent informed them by his letter dated 23rd February, 1996, that there is a dispute regarding the said meter between him and the respondent, and, therefore, in view of sub section 6 of Section 26 of the Indian Electricity Act, the said dispute should be referred by the respondent to the Electrical Inspector for his decision. The respondent did not accept his claim and they again asked him by letter dated 12th March, 1996 to remain present at Sabarmati Laboratory on 18th March, 1996. In the meantime, the present petitioner himself had written a letter to the Electrical Inspector on 4-3-96 submitting before him that there was dispute of the meter and that he was making a reference under sub section 6 of Section 26 of the Indian Electricity Act, 1925.

4. The petitioner has come before this court to quash and set aside the direction issued by the respondent asking him to remain present for the purpose of testing the meter in their laboratory on 18-3-96 and to make a reference to the Electrical Inspector regarding the dispute between the parties.

5. The claim of the petitioner is resisted by the respondent. The main contention of the respondent is that the petitioner claim that there is a dispute under sub section 6 of Section 26 of the Indian Electricity Act, 1925, is not correct. They have not come to any conclusion as to whether the meter is running correct or

not. They have not issued or even indicated to issue any additional bill against the present petitioner. The petitioners grievances are not tenable and the petitioner has come before the court at a very premature stage.

6. There is no dispute of the fact that the meter which was installed by the respondent on 21st June, 1995, bearing No.210134 had stopped running prior to 26th June, 1995. It is also an admitted fact that on 28th July, 1995, the said meter was removed and taken away by the respondent. It is very pertinent to note that it is not the claim of the petitioner that the petitioner was served with any notice of a claim by the respondent that the said meter which has been removed by them was not a correct meter and that he was liable to pay the amount for the consumption of energy not shown in the meter. The respondents have not also made a specific allegation against the present petitioner that the petitioner has tampered with the said meter. They only want to open and test the said meter in their laboratory in the presence of the present petitioner in order to find out as to whether there is any tempering with the said meter. If the provisions of sub section 6 of Section 26 is considered, then it would be quite clear that in case if there is any dispute between the consumer and the Electricity Board as to whether the meter was running correct or not, then only the reference is to be made under sub section 6 of Section 26 to Electrical Inspector. In the case of M.P.E.B. AND OTHERS V. SMT. BASANTIBAI A.I.R., 1988, SC. 71 it has been clearly laid down by the Apex Court that if there is any claim by the Electricity Board regarding the tempering with the meter and playing fraud in breaking open the seal or body of the meter, then that question cannot be referred to a Electrical Inspector. As stated earlier and with the cost of repetition it must be stated that till this date it is not the claim of the respondent that the meter in question was not correct or that the said meter was not showing the correct reading. It is not also the claim of the petitioner that the said meter was giving correct reading. Consequently there is no dispute between the parties as to whether the meter is correct or not. Therefore, there is no question of making a reference to Electrical Inspector under sub section 6 of Section 26 of Indian Electricity Act.

7. The action of the respondent in asking the present petitioner to remain present at the time of testing the meter and to have the inspection and testing could not be said to be either illegal, irrational or unnatural. When the action of the respondent could not

be said to be either unreasonable or irrational, this court would not interfere with the said action of exercising the discretionary jurisdiction under Article 226 of the Constitution of India. The learned advocate for the petitioner has vehemently urged before me that at the time of said inspection a direction should be issued to either electrical Inspector or the respondent to see that the Electrical Inspector is present at the time of said testing and inspection. But no provision of the Electricity Act nor any rules framed thereunder make incumbent on the respondent to carry out the inspection in the presence of Electrical Inspector. When there is no compulsion under the provision of law or under any other notification, it would not be proper for this court to direct the Electrical Inspector to remain present at the time of inspection and thereby to create a new procedure for inspection and testing of the meter. I am therefore, unable to accept the submissions made on behalf of the petitioner that Electrical Inspector should be present at the time of the inspection and testing of the meter.

8. Thus, I hold that the present petition is not tenable in law. I, therefore, dismiss the same, but in the circumstances, I direct the parties to bear their respective costs. Rule is discharged. Interim relief stands vacated.

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